

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY SCOTT,

Plaintiff,

v.

SIMPLY MOVING & STORAGE, STEFAN
MARCALI DOE, DIOP ROCK DOE,

Defendants.

ORDER

21 Civ. 1935 (ER)

RAMOS, D.J.

On March 11, 2021, Anthony Scott filed a complaint against Simply Moving & Storage, Stefan Marcali Doe, and Diop Rock Doe, alleging breach of the Fair Labor Standards Act, New York Labor Law, and supporting regulations. Doc. 10. Plaintiff has not filed affidavits of service on any of Defendants, and Defendants have not appeared. On September 7, 2021, the Court directed Plaintiff to either (1) file proof of service, or (2) show cause in writing why a further extension of the time limit for service is warranted, on or before October 7, 2021. Doc. 14. The Court warned that “this action will be dismissed without prejudice unless” Plaintiff complied with the Order. *Id.* October 7 has now passed without Plaintiff’s response. For the reasons set forth below, the Court dismisses this case for failure to execute service under Federal Rule of Civil Procedure 4(m).

Rule 4(m) provides that “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—*must* dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m) (emphasis added).

Over nine months have passed since Plaintiff filed the complaint. Plaintiff has also failed to comply with the Court's Order dated September 7, even when warned that failure to comply could result in dismissal under Rule 4(m). Accordingly, the Court dismisses Plaintiff's action without prejudice. The Clerk of Court is respectfully directed to terminate any pending motions and to close the case.

It is SO ORDERED.

Dated: December 13, 2021
New York, New York

A handwritten signature in blue ink, appearing to read 'Edgardo Ramos', is written above a horizontal line.

Edgardo Ramos, U.S.D.J.